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IN THE UNITED STATES BANKRUPTCY COURT
THE DISTRICT OF ARIZONA

In re:

SEDONA DEVELOPMENT PARTNERS,
LLC; and THE CLUB AT SEVEN CANYONS,
LLC

Debtors.

Chapter 11 Proceedings

Case No. 2:10-bk-16711-RTBP
Case No. 2:10-bk-16714-RTBP

Jointly Administered Under
Case No. 2:10-bk-16711-RTBP

**MOTION FOR INTERIM
AUTHORIZATION TO USE CASH
CLAIMED AS COLLATERAL**

Debtors Sedona Development Partners, LLC (“SDP”) and The Club at Seven Canyons, LLC (the “Club”) (collectively the “Debtors”), through counsel undersigned, hereby move this Court pursuant to 11 U.S.C. §§ 361 and 363, and Bankruptcy Rule 4001, for an Order authorizing, for a period of 90 days, the use of cash which may be claimed as “cash collateral” by Specialty Trust, Inc. (“Specialty”), in its capacity as lender and/or purported agent for certain investors. Although the Debtors do not believe that the cash generated by its operations and sought to be used pursuant to this motion is, in fact, cash collateral, they file this motion in an abundance of caution and to allow the continuation of their operations until such time as the Court may determine the nature and extent of Specialty’s liens, if any exist, in the Debtors’ post-petition revenues. The revenues implicated by this motion would be used in accordance with the budget attached hereto as Exhibit “A” (the “Budget”) to pay the Debtors’ ordinary and necessary operating expenses. Any

1 revenues received by the Debtors in excess of that described in the Budget will be held by the
2 Debtors until such time as Specialty agrees to, or this Court authorizes, its use. In support of this
3 motion, the Debtors state as follows:

4 **I. FACTUAL AND PROCEDURAL BACKGROUND**

5 1. On May 27, 2010, Debtors filed their voluntary petitions for relief under Chapter 11
6 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Arizona.

7 2. Debtors are authorized to operate their businesses as debtors-in-possession pursuant
8 to Sections 1107 and 1108 of the Bankruptcy Code.

9 3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334.

10 4. The subject matter of this motion is a core proceeding under 28 U.S.C.
§157(b)(2)(A), (M).

11 5. SDP owns an 18-hole golf course and related properties, including luxury villas, a
12 practice park, range house, tennis courts and related facilities in Sedona, Arizona, known generally
13 as Seven Canyons (the "Property").

14 6. The Club operates the golf course and related facilities for SDP.

15 7. SDP is the manager and sole member of the Club.

16 8. Nearly all of the Debtors' revenue is derived from the golf course and related
17 facilities owned by SDP and operated by the Club.

18 9. In connection with the acquisition, development, and operation of the Property, SDP
19 entered into a series of loan transactions with Specialty (the "Loans").

20 10. At present, upon information and belief, Specialty claims that there exists a principal
balance due and owing under the Loans in excess of \$54,384,000.

21 11. Upon information and belief, Specialty alleges that, among other things, one or more
22 of the parcels comprising the Property serve as collateral for the Loans.

23 12. As represented in the Budget, the Debtors' revenues derive from the following
24 sources (collectively, these revenues shall hereinafter be referred to as the "Income"):

25 a. Dues from members of the Seven Canyons golf club;

26 b. Dues from owners of fractional interests in the luxury villas;

27 c. Greens fees paid by members and their guests for the use of the golf
28 course;

- d. Greens fees paid by walk-up golfers for the use of the golf course;
- e. The sale of food and beverages;
- f. The sale of golf-related merchandise at the golf course;
- g. Certain other miscellaneous revenue such as golf lessons, cart fees, etc.; and
- h. Administrative fees received from the villas' homeowners' association.

13. The Budget shows the amount of Income that is expected to be generated in the next 90 days, and the manner in which the Income will be used to pay the Debtors' ordinary and necessary expenses (the "Budget").

14. The Budget also reflects certain "Opening cash" on hand held by the Debtor. This "Opening cash" consists primarily of funds advanced by Seven Canyons Recap, LLC ("Recap"), a pre-petition secured creditor of SDP, pursuant to a revolving line of credit secured by portions of SDP's Property.

15. With one exception, the expenses reflected in the Budget reflect the ordinary and necessary operating expenses of the Property, including, among other things, the payment of (a) salaries to the Debtors' employees who are absolutely necessary to maintain the golf course and to provide the services necessary to generate the Income; (b) utilities, including electricity and water expenses essential to the Property's continued operations and maintenance of the golf course; (c) leases for equipment used on the golf course, including golf carts; (d) insurance; and (e) management fees to Scottsdale Golf Group, the company that manages the golf course for the Debtors.

16. The Budget also reflects a one-time line item, in the amount of \$24,000, for the repair of a well pump necessary to keep the golf course watered and green. It is absolutely imperative that the well pump be repaired as soon as possible, because despite the Debtors' best efforts to maintain the course while the pump was down, the golf course is already demonstrating the ill-effects of a lack of sufficient water.

17. Ultimately, the Income does not constitute Specialty's "cash collateral," as that term is defined in 11 U.S.C. § 363(a). *See, e.g., See In re Everett Home Town Limited Partnership*, 146 B.R. 453, 456 (Bankr. D. Ariz. 1992) (holding that post-petition greens fees, restaurant and bar

1 revenues, cart fees, and revenues from the sale of goods and services by the golf course pro shop
2 were not cash collateral); *In re McCann*, 140 B.R. 926 (Bankr. D. Mass 1992) (same); *In re*
3 *GGVXX, Ltd.*, 130 B.R. 322 (Bankr. D. Colo. 1991) (applying Arizona law and holding that
4 “revenues derived from greens fees and similar use fees are not rents; they are essentially personal
5 property and do not constitute cash collateral.”). *Cf. In re Zeeway Corp.*, 71 B.R. 210, 211 (B.A.P.
6 9th Cir. 1987) (holding that income produced through the operations and services undertaken by the
7 Debtor post-petition are not “proceeds” of pre-petition collateral).

8 18. Consequently, it is not necessary to obtain either Specialty’s consent or the Court’s
9 authority to use the Income to pay the Debtor’s ordinary and necessary operating expenses.

10 19. Nevertheless, out of an abundance of caution, and to avoid a potentially time
11 consuming challenge by Specialty regarding the nature of the Income and Specialty’s alleged
12 security interest in the Income, the Debtors seek Court authority to use the Income to pay the
13 Debtor’s ordinary and necessary operating expenses for the next 90 days pursuant to the Budget.

14 **II. EVEN IF THE COURT ASSUMES, FOR THE PURPOSE OF THIS MOTION,**
15 **THAT THE INCOME IS CASH COLLATERAL, SPECIALTY’S INTERESTS**
16 **THEREIN ARE ADEQUATELY PROTECTED, AND, AS SUCH, THE COURT**
17 **SHOULD AUTHORIZE THE DEBTORS’ CONTINUED USE THEREOF**

18 In order to maintain its operations, including watering the golf course, providing necessary
19 services to its members and guests, insuring the property and paying employees, it is necessary for
20 the Debtors to be able to use the Income to pay ordinary and necessary operating expenses. The
21 use of the Income pursuant to the Budget will protect and preserve the Debtor’s estate and
22 Specialty’s (and other creditors’) collateral. Therefore, notwithstanding the Debtors’ position that
23 the Income does not constitute “cash collateral,” the Debtors should be authorized to use the
24 Income pursuant to the Budget even if the Income does constitute Specialty’s cash collateral.

25 Pursuant to 11 U.S.C. §363(c)(2), the Debtor may use cash collateral if the entity holding an
26 interest in such cash collateral consents or, if after notice and a hearing, the Court authorizes its use.
27 Where an entity objects to the use of cash collateral, the Court may still permit its use by the debtor
28 upon a showing that the rights of the objecting party are adequately protected. 11 U.S.C. §363(e);
See Collier on Bankruptcy §363.04, 15th Ed., 1989.

Section 361 of the Bankruptcy Code specifies three means of proving adequate protection,

1 however, as indicated in the legislative history to that section, such means are “neither exclusive
2 nor exhaustive.” Generally, the “interest in property sought to be protected under Code § 361 is the
3 value of the secured creditor’s collateral during the interim period between the filing of the petition
4 and confirmation of a plan of reorganization, or dismissal of the case.” *In re 499 W. Warren Street*
5 *Associates, Ltd. Partnership*, 142 B.R. 53, 57 (Bankr. N.D.N.Y. 1992) (citation omitted). The
6 nature of the adequate protection to which a secured creditor may be entitled should be determined
7 through case-by-case analysis, and with the goal of allowing the debtor maximum flexibility in
8 affording such adequate protection. *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985).

9 Courts have been understandably reluctant to forbid the reasonable and well-controlled use
10 of a primary creditor’s cash collateral in realization of the death knell that such a restriction would
11 represent for the Debtor’s prospects of reorganization. *See In re Franklin Pembroke Venture II*,
12 105 B.R. 276, 277-78 (Bankr. E.D.Pa. 1989); *In re Stein*, 19 B.R. 458, 459 (Bankr. Pa.,
13 1982)(“[T]he purpose of Chapter 11 is to rehabilitate debtors and generally, access to cash
14 collateral is necessary in order to operate a business.”).

15 Courts have consistently found that a debtor’s use of cash collateral to pay the reasonable
16 and necessary operating expenses of the debtor’s property, by itself, satisfies the “adequate
17 protection” requirement of § 363(c)(2). *See e.g. In re R&G Properties, Inc.*, 2009 WL 2043875 at
18 *6 (Bankr. D. Vermont 2009) (and cases cited therein); *In re Princeton Square Associates, L.P.*,
19 201 B.R. 90, 96 (Bank S.D.N.Y. 1996) (“The use of rents by a debtor in possession to maintain the
20 property to the same extent that a receiver of rents would use the rents does no economic harm to
21 the lender In the context of rents, this court concludes that no monetary protection is required
22 to be provided by the debtor in possession to the secured creditor to the extent that the rents are
23 applied for the maintenance of the property in the manner a receiver would apply the rents.”); *499*
24 *W. Warren Street Associates*, 142 B.R. at 56-57 (“Under appropriate circumstances, use of a
25 portion of the rental income to pay the reasonable and necessary operating expenses of the property
26 satisfies [the adequate protection requirement].”).

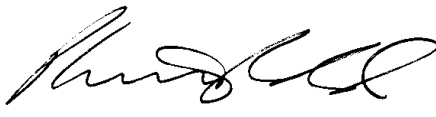
27 Here, even in the unlikely event that the Income is found to be cash collateral, Specialty is
28

1 protected against any risk by the use of the Income to pay the Debtors' ordinary and necessary
2 expenses. The use of the Income to operate and maintain the Property will protect Specialty's
3 interest in the Property and will protect against a decrease in the value of the Property. Therefore,
4 even though not required for the use of the Income, Specialty is adequately protected, and the
5 Debtors should be permitted to use the Income to pay the expenses associated with maintaining,
6 preserving and improving the Property.

7 WHEREFORE, the Debtors respectfully request that the Court enter its order authorizing
8 the Debtors to use the Income to pay their ordinary and necessary operating expenses in accordance
9 with the Budget, with a ten percent (10%) variance for the entire Budget, for the next ninety (90)
10 days, with the right to seek additional use of the Income after the expiration of such period and/or
11 to seek a specific determination that the Income is not Specialty's cash collateral.

12 DATED: June 3, 2010.

13 POLSINELLI SHUGHART PC

14
15 By: 

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17 Philip R. Rudd
18 Wesley D. Ray
19 Security Title Plaza
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Attorneys for the Debtor

20 **COPY** of the foregoing mailed (or served
21 via electronic notification if indicated by an
22 “*”) on June 3, 2010, to:

23 U.S. TRUSTEE'S OFFICE
24 230 N. 1st Avenue, Suite 204
Phoenix, AZ 85003

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Attorneys for Specialty Trust, Inc.

26 List of 20 largest unsecured creditors attached
27 hereto as Exhibit “B”

28 By: /s/ Cathie Bernales

EXHIBIT A

Sedona Development Partners	1				
Forecast Cash Flows for Court Reporting	2				
June to September, 2010	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
Receipts:	11	June	July	August	Total
Dues - Full golf	12	53,300	53,300	53,300	159,900
Dues - Fractionals	13	36,800	36,800	36,800	110,400
Green fees - member/guests	14	74,689	41,605	25,295	141,588
Green fees - walk on	15	60,300	31,323	16,958	108,580
Restaurant	16	82,767	44,461	37,331	164,560
Merchandise	17	10,400	6,300	5,900	22,600
Other revenues	18	5,000	10,029	8,169	23,198
Administration fee - Villas	19	33,784	33,784	33,784	101,352
	20				
Total receipts	21	357,040	257,601	217,536	832,178
Disbursements:	22				
Payroll, taxes & WC	23	117,288	169,394	112,332	399,014
Benefits	24	11,292	11,292	11,292	33,875
Utilities	25	13,778	23,778	23,429	60,985
Proshop supplies	26	0	1,550	550	2,100
Course maintenance	27	0	17,696	17,696	35,392
Golf cart leases	28	6,653	6,653	6,653	19,958
Lease payments	29	35,464	35,464	35,464	106,393
Computer support	30	0	5,200	5,200	10,400
Management fees	31	1,000	24,000	24,000	49,000
Insurance	32	3,000	3,000	3,000	9,000
Property taxes	33	0	0	0	0
Members promo	34	0	2,200	2,200	4,400
Member promotions	35	0	0	0	0
Trustees fees	36	0	1,950	0	1,950
Other costs	37	0	17,308	18,143	35,452
Allocation in - Roads	38	12,596	12,596	12,596	37,788
Allocation in - Villas	39	10,601	10,601	10,601	31,803
	40				
	41	211,671	342,682	283,156	837,510
Food, bev & merchandise	42	21,711	18,411	18,363	58,485
	43				
Total costs	44	233,382	361,093	301,519	895,995
Capital expenditures	45	0	0	0	0
Well pump #3	46	24,000	0	0	24,000
Well pump #4	47	0	0	0	0
Other	48	0	0	0	0
	49				
Total disbursements	50	257,382	361,093	301,519	919,995
	51				
Net cash flow	52	99,658	-103,492	-83,983	-87,817
Opening cash	53	97,500	197,158	93,667	97,500
	54				
Closing cash	55	197,158	93,667	9,683	9,683
	56	=====	=====	=====	=====

**In re Sedona Development Partners, LLC; and The Club at Seven Canyons
Chapter 11 – Case No. 2:10-bk-16711 and Case No. 2:10-bk-16714-RTB
Pending Joint Administration under Case No. 2:10-bk-16711-RTB
Exhibit B**

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SPORTSWEAR
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SUITE 700
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